



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

October 6, 1965

Honorable Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Opinion No. C-522

Re: Whether a rooming house qualifies as a commercial lodging establishment as that term is used in Section 15 of Article V of the General Appropriation Act of 1965 and related questions.

Dear Mr. Calvert:

Your request for an opinion on the above subject matter asks the following questions, in view of the provisions of paragraph (a) of Section 15 of the General Appropriation Act of the 59th Legislature:

"1. Does a rooming house qualify as a commercial establishment?

"2. Does an apartment qualify as a commercial establishment?

"3. If you hold that the renting of an apartment follows within the definition of 'commercial lodging', what would two or more State employees renting and living in the same apartment be entitled to for reimbursement on a per diem basis?

"4. At what rate of per diem would an employee be entitled to who secures lodging at YMCA, YWCA, and membership clubs?

"5. Would a statement or billing received as a result of the use of a credit card from a company other than a commercial hotel, motel, or other commercial lodging establishment, entitle the employee to qualify under the \$12.00 per day per diem rate?"

This office in Opinion No. C-472 defined a "commercial establishment" as follows:

"In view of the foregoing, it is our opinion that the phrase 'commercial hotel, motel, or other commercial lodging establishment' refers to those persons, firms, corporations, associations or establishments, engaged in the business of furnishing lodging to the public generally for pay, . . ."

As pointed out in the above opinion, "Article 4596, Revised Civil Statutes of Texas, 1925, defines a hotel or inn as 'a place where the business is to furnish food and lodging or either, to all who apply and pay therefor.'" (Emphasis added.) No such restriction is placed on the term "commercial lodging establishment". The only requirements of the latter are that they "furnish lodging to the public generally for pay." (Emphasis added.)

Applying the above definition to questions 1, 2, and 4, rooming houses, apartments, and YMCA's and YWCA's fall within the definition of "commercial lodging establishment". Consequently, any State employee who must remain out of town in order to perform his duties for either a day or several months and elects to stay at one of the above is entitled to twelve dollars (\$12) per diem.

Question number 4 does not reveal the type membership clubs to which you are referring. If membership is both limited and is a prerequisite for using the facilities of the club, it is not a commercial establishment open to the public even though it may require remuneration from the individual member who stays overnight. For example, a social fraternity would be a membership club which would furnish lodging to its itinerant members for pay but would not be a commercial establishment within the above definition.

In answer to question number 3, paragraph (a) of Section 15 of Article V of the General Appropriation Act of the 59th Legislature provides:

"Rates of allowance. Each employee traveling on State business inside the boundaries of the

State of Texas shall be allowed, in lieu of actual expenses incurred for meals and lodging, a flat per diem rate not to exceed twelve dollars (\$12) provided there is attached to his expense account when submitted a 'Paid' bill or receipt from a commercial hotel, motel, or other commercial lodging establishment for his lodging, but provided further that if such receipt is not submitted, the flat per diem rate shall not exceed seven dollars (\$7)."

Section 15 of Article V places no limitation on the actual cost of lodging; it merely requires that the State employee has paid for his lodging and such payment is evidenced by a "Paid" bill or receipt from a commercial hotel, motel, or other commercial lodging establishment in order to qualify for the twelve dollar (\$12) per diem rate. When two or more State employees are renting and living in the same apartment, each employee's expense for lodging is that portion which he pays of the total bill. Upon the submission by the State employee of a "Paid" bill or receipt, or copy thereof, indicating that the employee was one of the tenants, he will qualify for the twelve dollar (\$12) per diem rate for the days covered by the receipt.

Article 1555b, Vernon's Texas Penal Code, defines credit card as follows:

"Sec. 3. The term 'credit card' as used herein means an identification card, plate, coupon, book, device or number issued to a person, association of persons, or corporation by a person or business organization which permits such person, associations of persons, or corporations to attempt to obtain, or obtain, or pay for items of value or services of any type, irrespective of whether such items of value or services can be obtained or paid for by a credit card issued by the person or business organization offering the items of value or services or by another person or entity engaged in providing credit facilities for said person or business organization." (Emphasis added.)

The credit card represents a contract between the credit card holder and the issuer of the card. Once the credit card holder has used the card, he becomes liable to the issuing company. Texaco, Inc. v. Goldstein, 229 N.Y.S.2d 51, 34 Misc.2d 751 (Municipal Court of New York, 1962). Similarly, the issuing company becomes liable to the party who accepted the card. As between the credit card holder and the party accepting the credit card, the holder is relieved of further liability and for purposes of Section 15 of Article V the accepting party has been "paid" thus qualifying the State employee for the twelve dollar (\$12) per diem rate upon the presentation of the statement or billing received from the company issuing the credit card.

SUMMARY

Apartments, boarding houses, YWCA's, and YMCA's are commercial establishments and State employees are entitled to the twelve dollar (\$12) per diem rate upon presentation of a "Paid" bill or receipt from one of the above. A membership club, that is limited as to its membership, and membership is a prerequisite for using the facilities of the club, is not a "commercial lodging establishment" as that term is used in Section 15 of Article V.

Two or more State employees may occupy the same apartment and qualify for the twelve dollar (\$12) per diem rate upon the presentation of a "Paid" bill or receipt, or copy thereof, which indicates that they were tenants.

A statement or billing received as a result of the use of a credit card from a company other than a commercial hotel, motel, or other commercial lodging establishment entitles the employee to qualify under the twelve dollar (\$12) per diem rate for the days covered by the bill or statement.

Hon. Robert S. Calvert, page 5 (C-522)

Very truly yours,

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APPROVED:
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